



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

October 1, 1998

Ms. Linda Wiegman
Supervising Attorney
Office of General Counsel
Texas Department of Health
1100 West 49th Street
Austin, Texas 78756-3199

OR98-2345

Dear Ms. Wiegman:

You have asked whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your requests were assigned IDs# 118404 and 118405.

The Texas Department of Health (the "department") received two requests for information about Brazos Birthing Center. You submitted to this office records which are responsive to the requests, including a sample document of a birth certificate.¹ You indicate that the department has already provided some records to the requestors, but you also assert that other documents are protected from disclosure under section 552.101 of the Government Code, in conjunction with other statutes, and on the basis of common-law privacy. You further assert that birth certificates which were part of the requested investigation records are protected from disclosure under section 552.115 of the Government Code.

You assert that the patient identities in the submitted records are protected from disclosure on the basis of common-law privacy as protected by section 552.101 of the Government Code. Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." In *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977), the Texas Supreme Court said that information must be withheld from public disclosure under a common-law right of privacy when the information is (1) highly intimate and embarrassing such that its release would be highly

¹We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision No. 499 (1988), 497 (1988). Here, we do not address any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

objectionable to a person of ordinary sensibilities, and (2) there is no legitimate public interest in its disclosure. The type of information the supreme court considered intimate and embarrassing included information that relates to pregnancy. *Id.* In Open Records Decision No. 262 (1980), this office stated that information about a patient's injury or illness might be protected under common-law privacy if it relates to gynecological or obstetrical illnesses. We agree that identifying information about the patients listed in these records is protected from disclosure on the basis of the patients' common-law privacy. We note that, to protect the privacy of the patient, identifying information such as the names of spouses, children, addresses, and telephone numbers must be withheld from disclosure.

You have marked some information as protected under section 552.101 of the Government Code in conjunction with the Medical Practice Act (the "MPA"), article 4495b of Vernon's Texas Civil Statutes. Sections 5.08(b) and (c) of the MPA provide:

(b) Records of the identity, diagnosis, evaluation, or treatment of a patient by a physician that are created or maintained by a physician are confidential and privileged and may not be disclosed except as provided in this section.

(c) Any person who receives information from confidential communications or records as described in this section other than the persons listed in Subsection (h) of this section who are acting on the patient's behalf may not disclose the information except to the extent that disclosure is consistent with the authorized purposes for which the information was first obtained.

Medical records may be released only as provided under the MPA. Open Records Decision No. 598 (1991). Section 5.08(j)(1) provides for release of medical records upon the patient's written consent, provided that the consent specifies (1) the information to be covered by the release, (2) reasons or purposes for the release, and (3) the person to whom the information is to be released. Section 5.08(j)(3) also requires that any subsequent release of medical records be consistent with the purposes for which the department obtained the records. Open Records Decision No. 565 at 7 (1990). We agree that the information you have marked as protected under the MPA is confidential as outlined by the MPA, and we also have marked other information which is subject to the MPA. We also flagged some records that we reviewed and which may be MPA records "created or maintained by a physician."

You have marked some records as Emergency Medical Service records subject to section 773.091 of the Health and Safety Code (the EMS Act), which provides in part:

(b) Records of the identity, evaluation or treatment of a patient by emergency medical services personnel or by a physician providing medical supervision that are created by the emergency medical services personnel or physician or maintained by an emergency medical services provider are confidential and privileged and may not be disclosed except as provided by this chapter.

....

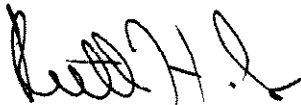
(g) The privilege of confidentiality under this section does not extend to information regarding the presence, nature of injury or illness, age, sex, occupation, and city of residence of a patient who is receiving emergency medical services. . . .

Section 773.091(b) protects EMS records from disclosure to the extent that they supply information as to the identity, evaluation, or treatment of patients, except for the information specifically listed as not confidential in section 773.091(g). *See* Open Records Decision No. 598 (1991). You must release from the marked EMS records the information that section 773.091(g) provides is not confidential, including the patient's age, date of birth, sex, city of residence, and occupation. You also must release the general medical information that concerns the presence or nature of injury or illness for which the patients were treated or transported. However, you may not release the name of the patients or other identifying information such as addresses, telephone numbers, or insurance information. Treatment information, the evaluation, and other medical information also is confidential. We agree that you have appropriately marked the EMS records to provide for certain information to be withheld and the remaining information to be released.

You submitted to this office a representative sample of a copy of a birth certificate. You contend that the birth certificates are confidential under section 552.115 of the Government Code, which generally excepts from disclosure birth records maintained by the Bureau of Vital Statistics of the department. We agree that these birth certificates are confidential under section 552.115 of the Government Code.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in black ink, appearing to read 'Ruth H. Soucy', with a stylized flourish at the end.

Ruth H. Soucy
Assistant Attorney General
Open Records Division

RHS/ch

Ref: ID# 118404, 118405

Enclosures: Submitted documents

cc: Ms. Peggy O'Hare
The Facts
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cc: Mr. Melvin Edwards, via Facsimile (512) 475-3727
(w/o enclosures)